IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1229 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASSISTANT COLLECTOR

Versus

WESTERN INDIA CERAMICS PVT.LTD

Appearance:

1. Criminal Appeal No. 1229 of 1992

MR MUKESH R SHAH for Petitioner No. 1

MR BB NAIK for Petitioner No. 1

MR KS NANAVATI for Respondent No. 1-3

MR SS PATEL, APP for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/11/2003

ORAL JUDGEMENT

#. The appellant, being the Assistant Collector of Central Excise, Division-II, Central Excise Buildg., Vadodara, has preferred this appeal against the respondents challenging the judgment and discharge order dated 25.11.1991 recorded by the learned Chief Judicial Magistrate, Vadodara in Criminal Case No.2687 of 1987 in which the learned Magistrate found that the complaint was time barred, and, therefore, the present respondents were ordered to be discharged under Section 245 (2) of the Code of Criminal Procedure, 1973 ("the Code" for short) for the offence punishable under Section 9 of the Central Excise Act.

#. It is submitted that during the pendency of the aforesaid criminal case, an application was submitted by the present respondents stating that the complaint was time barred, and, therefore, the respondents be discharged. The trial Court heard the parties and found that the complaint was time barred. Accordingly, the trial Court directed that the present respondents be discharged from the said offence under Section 245(2) of the Code.

#. Now, so far the order impugned is concerned, the same is not under dispute that it is an order for discharge of the present respondents. So far the appeal is concerned, provisions have been made in Section 372 onwards in the Code. Section 373 of the Code provides for an appeal from order requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour. Section 374 of the Code provides for an appeal from convictions. Section 375 of the Code provides for no appeal in certain cases when accused pleads guilty. Section 376 of the Code provides that there shall be no appeal in petty cases. Section 377 of the Code provides for an appeal by the State Government against sentence. Section 378 of the Code provides for an appeal in case of acquittal. Section 379 of the Code provides for an appeal against conviction. Section 380 of the Code provides for special right of appeal in certain cases.

#. The order impugned in this appeal does not fall in any of the aforesaid categories. It is required to be considered that an appeal against an acquittal is permissible under Section 378 of the Code. However, the order impugned in this appeal is not an order of acquittal, and, therefore, the said order would not fall within the four-corners of Section 378 of the Code.

#. It is well settled that right to file an appeal is a statutory right, and, therefore, it must flow from the

law as may be applicable to a particular case. Therefore, if no provision has been made for filing an appeal, the Court cannot entertain such appeal. It is more so when Section 372 of the Code provides that no appeal shall lie from any judgement and / or order of the criminal court except as provided for by this Court or by any other law for the time being in force.

#. It is therefore clear that the provision for filing an appeal has to be found either from the Code or from any other law time being in force. As stated above, an appeal against discharge has not been provided in the Code. Such appeal has not been provided in any other law for the time being in force. Therefore, an appeal against discharge does not lie and, hence, the appeal is required to be dismissed, as, it does not lie.

#. It is found that the prayer for filing revision has not been made. However, in case, the appellant feels that the revision lies and if the appellant is so advised, it would be open to the appellant to prefer revision application in view of the provisions made in Section 397 read with Section 401 of the Code.

#. Anyway, when the appeal does not lie, it is required to be dismissed. For the foregoing reasons, this appeal is ordered to be dismissed.

(D.P.Buch,J)
(pathan)